IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Date of Hearing /decision: 17.07.2018

Appeal No. ST/50756/2015-CU[DB]

[Arising out of Order-in-Appeal No. BPL-EXCUS-000-APP-168-14-15 dated 26/11/2014 passed by Commissioner (Appeal-I) Customs, Central Excise and Service Tax, Bhopal (Madhya Pradesh)]

My Car Pvt. Ltd. Appellants

Vs.

CGST CE & CC, Bhopal Respondent

Appearance:
Shri Milind Sharma, Advocate for the Appellant
Shri G.R. Singh, AR for the Respondent

CORAM:
Hon'ble Shri C.L. Mahar, Member (Technical)
Hon’ble Ms Rachna Gupta, Member (Judicial)

FINAL ORDER NO. 52711/2018

Per C.L. Mahar:

1. The brief facts of the matter are that the appellant is engaged in the business of trading and servicing of four wheeler motorcars as an authorised dealer of Maruti Udyog Ltd. and they are also doing the servicing of the automobile cars. It has been the allegation of the Department that the appellant is availing Cenvat Credit on the Service Tax paid on various input services such as telephone, advertising, renting, insurance, banking, maintenance and repairs, security services, and other financial services etc under the provisions of Cenvat Credit Rules, 2004 on the trading activity. The Department is of the view that the appellant have wrongly utilised Cenvat Credit of input services pertaining to services used in trading of automobile cars. Since the trading activity only covers the transfer of goods to the purchaser on

payment of cash or any other valuable consideration and therefore such activity is only purely a sale activity and therefore cannot be considered as a service and thus same is beyond the scope of Finance Act, 1994 as well as the provisions of Cenvat Credit Rules, 2004. The Department in the show cause notice has also mentioned that since the respondent i.e. the appellant-assessee did not maintain separate accounts for input services used towards the trading activity (exempted activity) and that towards servicing of cars, therefore, the appellant are required to pay an amount of Cenvat Credits in terms of Rule 6 (3a) of Cenvat Credit Rules, 2004.

2. The Ld. Advocate appearing on behalf of the appellant has contended that activity of trading has come to be included as an exempted category service only w.e.f. 01/04/2011 by way of amendment carried out in the Cenvat Credit Rules , 2004 vide Notification No. 13/2011-CE (NT) dated 31st March, 2011 and therefore the activity of trading has to be considered as an exempted service only after 1st April, 2011 and Cenvat Credit of input services cannot be demanded prior to 01.04.2011.

3. We have heard both sides. It is a matter of record that the appellant has been engaged in trading of automobile cars along with servicing of the cars and other automobile from the same premises and they have availed Cenvat Credit of various common input services which has been utilised towards both taxable services as well as for trading activity.

4. We are of the opinion that trading activity abinitio cannot be considered as a "service" because the trading in the cars only involves transfer of property on financial consideration from the appellant dealer

to various buyers of automobile cars. The Cenvat Credit facility of input services is only available to the output services rendered by any assessee and thus the Cenvat Credit of input services used in Trading activity is not allowable as per Cenvat Credit Rules, 2004.

5. We have heard both sides. The matter is no longer res-integra and we rely upon the judgment in case of Hon'ble Madras High Court in the case of ***Ruchika Global Interlinks V/s CESTAT, Chennai reported in 2017 (5) GSTL 225 (Mad.).*** The Hon'ble High Court in the judgment cited (supra) has clearly been provided that:-

> ***"10.2*** *Clearly, both before and after amendment, "exempted services" meant those taxable services, which were exempt from whole of Service Tax and, included those services on which Service Tax was not leviable, under Section 66 of the Finance Act. The inclusion in Explanation to Rule 2(e) "trading" was, without doubt, only clarificatory. As accepted by Mr. Jayachandran, the appellant had not being paying Service Tax on trading activity during the relevant period."*

We have also relied upon the order of this Tribunal in case ***of Lally Automobiles Pvt. Ltd. V/s Commissioner of Service Tax, Delhi 2018 (10) GSTL 310 (Tri.-Del)***. The relevant extract of the judgment are reproduced herein below:-

> *" **6.** We have heard both the sides and perused appeal records. The admitted facts are that the appellants availed Cenvat credit on input services and they had considerable turnover and income in trading activities. It is also admitted that the services on which credit have been availed are partly relatable to trading activities also. We note that the appellants contested the reversal of credit, to a proportionate extent, on the ground that trading is not an exempted service prior to the insertion of explanation and as such the provisions of Rule 6(3) will not apply. One main aspect is missed by the appellant in such argument. The case of the appellant is that trading cannot be considered as exempted service. It is clear that trading is not a taxable service also. In other words, trading is an activity which is not covered under the scope of Cenvat Credit Rules, 2004. The appellants should not have availed any credit on input services when such services are attributable to an activity which is not at all taxable and hence, not covered by the scope of Cenvat Credit Rules, 2004."*

6. In view of above, we hold that the appellant are not entitled for Cenvat Credit of common input services taken for trading of cars. Accordingly, we do not find any infirmity in the Order-in-Appeal dated 26/11/2014 and thus the appeal is dismissed.

(Operative part of the order pronounced in the open court)

(Rachna Gupta)
Member (Judicial)

(C.L.Mahar)
Member (Technical)

Rekha